
July 5, 2017

Waiting Period Penalty in Senate Republicans' Health Bill Would Lock People Out of Coverage, Provide Little Benefit to the Risk Pool

By Sarah Lueck

The Senate Republican health bill includes a six-month waiting period penalty for people who have gaps in coverage and then attempt to enroll in health insurance in the individual market. This “continuous coverage” penalty would treat people harshly when they have been uninsured for a period of time — locking them out of coverage and reducing their access to needed care for six months or more. At the same time, it would fail to significantly increase overall enrollment in the individual market or improve the health insurance risk pool.

Senate Republicans intend for this flawed provision to serve as a substitute for the Affordable Care Act’s (ACA) individual mandate to have coverage or pay a penalty, which the Senate health care bill would immediately eliminate. The waiting period penalty, however, is not only onerous but ineffective. While locking millions of people out of coverage and increasing the paperwork burden for many more consumers, it would also be far less effective than the individual mandate in stabilizing the risk pool.

Here’s how the waiting period penalty would work: beginning in 2019, people seeking to buy coverage in the individual market would generally be required to show they had health coverage during the prior 12 months, without a gap of more than 63 days. If they had a gap, or could not demonstrate they had coverage for an adequate length of time, they would be subject to a waiting period of at least six months. During the waiting period, they couldn’t enroll or use covered benefits, nor would they be charged premiums.

Penalty Would Lock Millions of People Out of Coverage

Had the Senate bill been in effect in 2016, about 2 million individual market enrollees would have been subject to the Senate’s waiting period penalty, according to estimates by the Commonwealth Fund.¹ (These enrollees reported they had a gap in coverage of more than three months in the past year, a longer gap than the Senate bill would tolerate.) Another 19 million *uninsured* people reported

¹ Sara R. Collins and Munira Z. Gunja, “Millions of Americans Would Face a Six-Month Waiting Period to Get Health Insurance Under the Senate’s ACA Repeal Bill,” Commonwealth Fund blog, June 27, 2017, <http://www.commonwealthfund.org/publications/blog/2017/jun/waiting-period-under-senate-aca-repeal-bill>.

having a gap in coverage longer than three months. Under the Senate bill, some of that group would also face a six-month waiting period if they tried to purchase coverage in the individual market.

Gaps in coverage can occur for many different reasons. People may face financial hardships that lead them to miss premium payments, such as an expensive car repair and reduced work hours that swamp a modest-income family's monthly budget. Or someone may leave a job with health benefits and fail to secure new coverage before a couple of months have passed, due to lack of knowledge that there is a deadline or because they expect they will soon find a new job with health benefits. Safeguards are currently in place to limit people's ability to wait until they get sick to buy an insurance plan, including the individual mandate. The Senate bill's waiting period penalty is a "punitive substitute" for the mandate because it would leave many people uninsured for lengthy periods of time, as the Commonwealth Fund report noted, possibly leaving them facing an illness without the protection of health care coverage.

For example, consider someone who loses a job with health benefits in March 2019 and racks up more than 63 days without health insurance as they search for new work. Under current rules, the person has just 60 days after losing the employer coverage to access a special enrollment period allowing them to sign up for an individual market plan. Missing that window would mean waiting to sign up until the next open enrollment period in late 2019, with benefits beginning in January 2020.

Under the Senate bill, this would change. The same person would end up being uninsured until June 2020, assuming they apply for a plan December 1, during the open enrollment period. If the person is in the Senate bill's coverage limbo and finds out they have a serious illness, such as cancer, or that they are pregnant, they will have no way to finance the health care they will need until many months later. (The bill exempts newborns and adopted children from the waiting period, as long as they are enrolled in individual market coverage within 30 days of being born or adopted; it also exempts people who come directly from another individual market plan.)

Provision Would Increase the Paperwork Burden for Many More Consumers

Many people who haven't had *any* gaps in coverage would have to jump through new hoops to demonstrate that fact under the Senate bill. This would be true even during the annual open enrollment period, as well as during special enrollment periods (SEPs) which allow people to sign up for individual market coverage throughout the year when they experience an event such as losing other coverage or having a baby.

Under the Senate bill, a person who loses health benefits through their job would have to gather and submit paperwork showing they had coverage (from that employer and any other coverage sources) during the last 12 months, without a gap of more than 63 days. (Currently, someone who loses job-based health benefits can sign up during open enrollment without providing such paperwork.) It's not clear that people would be able to easily obtain the documents needed to avoid a waiting period. While the Senate bill says the Health and Human Services Secretary "may" require health insurers to provide proof of past coverage, that doesn't provide assurance that anyone in need of documentation will have it when they need it, particularly if they need to prove they had an employer plan or coverage from a public program such as Medicaid.

Paperwork requirements such as this can deter people from enrolling, according to research and experience in programs such as Medicaid and the Children’s Health Insurance Program. People who expect to need health care services would be most likely to complete the process amid such hassles, while healthier people might decide to sit out. The experience in the marketplaces bears this out. For example, increased SEP documentation requirements coincided with a 20 percent drop in SEP enrollments, according to federal data.² And younger people (who tend to be healthier) have been less likely than older people to finalize their enrollment when they experienced data-matching issues that required them to provide the federal marketplace with additional documents to verify their eligibility.³

Penalty Would Be Far Less Effective Than the Individual Mandate in Stabilizing the Risk Pool

The Senate bill’s waiting period penalty would “slightly increase” the number of people with insurance over the period of 2018 to 2026 if considered in isolation, according to the Congressional Budget Office (CBO).⁴ But the penalty isn’t as effective at boosting enrollment as the individual mandate. The Senate bill’s elimination of the mandate would result in 16 million more uninsured people by 2019, many of them healthier people who cost less to cover, CBO found. In 2019, the waiting period penalty would take effect, but the new penalty would fail to increase the number of people with insurance, as “the incentives to obtain coverage would be weak because premiums would be relatively high,” CBO wrote. Insurers have also raised concerns that the Senate provision wouldn’t be an effective substitute for the mandate, saying it wouldn’t encourage sufficient numbers of healthier people to enroll in or maintain their coverage.⁵

The Senate bill’s waiting period penalty would cause some additional people to purchase coverage during open enrollment in order to avoid the waiting period the subsequent year, and others would decide to maintain their coverage throughout an entire year to avoid the waiting period in the future, according to CBO.

Still others who would have otherwise gone an entire year without health insurance would decide to pay premiums in the second half of a year, after exhausting the waiting period, and concentrate their health care usage during the period when they have coverage, CBO said. This points to some possible troubling effects that the waiting period penalty could have on the risk pool. In addition to the documentation requirements possibly deterring healthier people from enrolling, anyone whose coverage starts mid-year — after they exhaust the waiting period — would likely still be subject to a full-year, very large deductible before many of their plan’s benefits would start. At the same time,

² “Pre-Enrollment Verification for Special Enrollment Periods,” Centers for Medicare & Medicaid Services, <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Pre-Enrollment-SEP-fact-sheet-FINAL.PDF>.

³ “Strengthening the Marketplace — Actions to Improve the Risk Pool,” Centers for Medicare & Medicaid Services press release, June 8, 2016, <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-06-08.html?DLPage=2&DLEntries=10&DLSort=0&DLSortDir=descending>.

⁴ “H.R. 1628, Better Care Reconciliation Act of 2017,” Congressional Budget Office, June 26, 2017.

⁵ Anna Wilde Mathews, “As Health Bill Proceeds, Insurers Regret Loss of Individual Mandate,” *Wall Street Journal*, June 27, 2017, <https://www.wsj.com/articles/health-insurers-uneasy-with-senates-approach-to-continuous-coverage-1498580450>.

other elements of the Senate bill would sharply increase individual market plan deductibles — leaving many people facing deductibles thousands of dollars higher than they do today.⁶ For someone who is subject to the Senate bill’s waiting period and cannot enroll in a plan until June, this would leave little time for them to spend down a very large deductible amount — unless they expected to use a significant amount of health care in a short period of time. In this way, the waiting period could make it more likely that people who know they will need costly care would decide it is worthwhile to enroll, while healthier people may not.

A waiting period penalty is an insufficient replacement for the ACA’s individual mandate. It likely wouldn’t stem the flow of people, especially healthier people, out of the individual market. And it makes a gap in coverage, or failure to prove continuous coverage, a costly problem for millions of individuals.

⁶ Aviva Aron-Dine and Tara Straw, “Senate Bill Still Cuts Tax Credits, Increases Premiums and Deductibles for Marketplace Consumers,” Center on Budget and Policy Priorities, revised June 25, 2017, <http://www.cbpp.org/research/health/senate-bill-still-cuts-tax-credits-increases-premiums-and-deductibles-for>.